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IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

JOHN S. TOLL, PRESIDENT, UNIVERSITY OF MARYLAND,

and

UNIVERSITY OF MARYLAND,
Petitioners,

v.

JUAN CARLOS MORENO ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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SUPPLEMENTAL BRIEF FOR RESPONDENTS IN OPPOSITION

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SUPPLEMENTAL BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents Juan Carlos Moreno *et al.* filed their brief in opposition to the petition for writ of certiorari on August 14, 1981. On August 24 and 25, 1981, respectively, respondents' counsel received copies of the brief of Alabama *et al.* as *amici curiae* and the motion for leave to file and brief of the American Council on Education *et al.* as *amici curiae*. Respondents submit this supplemental brief, pursuant to Rule 22.6 of this Court's Rules, to respond to those briefs of *amici curiae*, which represent "intervening matter not available at the time of the [respondents'] last filing" (Rule 22.6).

ARGUMENT

1. *Errors of Amici Curiae Regarding the Importance of This Case.* To begin with, the briefs of *amici curiae*, through a series of incorrect and misleading statements, mistakenly exaggerate the significance of this case. They say, for example, that the University of Maryland's In-State Policy at issue here is like that of most public colleges and universities in the United States, which, according to the *amici*, deny eligibility for in-state status to nonimmigrant aliens. Br. of Ala. *et al.* at 3, 8; Br. of Am. Coun. on Educ. *et al.* at 3-4. They assert further that if the decisions below are allowed to stand, large numbers of nonimmigrants, including those on foreign-student visas and other temporary visitors, will be permitted to qualify for in-state benefits, at a great financial cost to the state-supported schools. Br. of Ala. *et al.* at 3, 10; Br. of Am. Coun. on Educ. *et al.* at 6. The *amici* even go so far as to state that the decisions below strike at "the very rationale for the in-state/out-of-state distinction" (Br. of Ala. *et al.* at 3) and "may ultimately force publicly-supported colleges and universities to charge the same rate of tuition to all" (Br. of Am. Coun. on Educ. *et al.* at 7; see also *id.* at 8).

These statements are untrue and misleading. The decisions below will have no such drastic impact. As shown in our brief in opposition, the decisions below struck down the University of Maryland's In-State Policy only as it applies to the holders of G-4 visas; and the rationale of those decisions affects only the G-4 visaholders and those few other similar categories of nonimmigrant visaholders who, under the principles of this Court's decision in *Elkins* v. *Moreno*, 435 U.S. 647, 663-68 (1978) (App. 119a-124a), are capable of establishing domicile in the United States and in Maryland. Those decisions do not affect the great majority of nonimmigrant visaholders, such as foreign-student visaholders and temporary foreign visitors, who are precluded by federal law from establishing domicile in the Unitel States, as this Court held in *Elkins*. 435 U.S. at 665-66 (App. 121a-122a). Those nonimmigrant visaholders could not qualify for in-state status even if they were subject to the same test (domicile) applicable to citizens and immigrant visaholders.

The *amici* assert that the concept of domicile will not so limit the numbers of nonimmigrants who can qualify for in-state status, since the lower courts "are divided on the question of whether individual categories of nonimmigrants can acquire a domicile in the United States." Br. of Ala. *et al.* at 10; see also Br. of Am. Educ. *et al.* at 6. That claim is erroneous. This Court held in *Elkins* that "Congress expressly conditioned admission for some purposes on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States." 435 U.S. at 665 (App. 121a). It listed, as examples, the holders of the following nonimmigrant visas: B (temporary visitors), F (foreign students), C (aliens in immediate and continuous transit), D (vessel crewmen landing temporarily), and H (temporary workers). *Id.* On the other hand, the Court noted, "Congress did *not* restrict every nonimmigrant class" and in particular placed no such restrictions on

intent on G-4 visaholders. 435 U.S. at 666 (App. 122a).[1] Thus, the Court held, Congress "was willing to allow nonrestricted nonimmigrant aliens to adopt the United States as their domicile." *Id.* This Court, then, has given explicit guidance on the question whether various categories of nonimmigrant visaholders can be domiciled in the United States. We are aware of no subsequent split in authority among the lower courts as to which categories of nonimmigrant visaholders can be domiciled in the United States, and the *amici* do not demonstrate any.[2] In view of these circumstances, it seems clear, contrary to the *amici*'s claims, that only a small number of nonimmigrant aliens are affected by the decisions of the courts below.

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[1] Other unrestricted nonimmigrant categories include E (aliens admitted under certain treaties of commerce) and I (certain foreign media representatives).

[2] Of the cases cited by *amici* (see Br. of Ala. *et al.* at 10), only one, *Castillo-Felix* v. *INS*, 601 F.2d 459 (9th Cir. 1979), postdates the *Elkins* decision. The issue in that case was the proper construction of 8 U.S.C. § 1182(c), which provides for the waiver of exclusion provisions for certain aliens returning to "lawful unrelinquished domicile of seven consecutive years." The petitioner attempted to make that showing even though his first lawful entry to the country was within seven years. While the court accepted the INS position that the seven consecutive years of "lawful unrelinquished domicile" must, under § 1182(c), follow the granting of a permanent resident visa, the case does not address which categories of aliens can establish domicile under the law of the United States or individual States for general purposes. Furthermore, the language quoted by Alabama *et al.* (at 10)—"The INS maintains that an alien cannot be lawfully domiciled in this country unless 'lawfully admitted for permanent residence'"—stated the INS's position with respect to the issue in that case, not as a general matter, as is made clear by a later statement: "The INS concedes that a small group of nonimmigrants including diplomats, foreign government representatives and their retinues, treaty traders, and media representatives, are not required to maintain a foreign residence, and may be here for other than temporary purposes," citing 8 U.S.C. § 1101(a)(15)(A), -(E), -(G), and -(I). 601 F.2d at 464 & n.12.

For similar reasons, and again contrary to the assertions of the *amici*, the lower courts' decisions will not have any great impact on the in-state policies of most public colleges and universities. We have not had time (nor do we believe it necessary or appropriate) to attempt a complete survey of all state-supported colleges and universities since receiving the briefs of the *amici*. We have, however, obtained copies of the policies of several such universities in the States joining in the Brief of Alabama *et al.* Of these, the state universities in the two areas with major public international-organization headquarters (*i.e.*, the Washington, D.C., and New York City areas)—in which most, if not all, G-4 visaholders reside—have policies which do not specifically exclude nonimmigrant visaholders from in-state status, as does the University of Maryland. Either they simply base in-state status on domicile with no special provision or restriction dealing with aliens (the State University of New York and the state universities in Connecticut) or they specifically allow nonimmigrant visaholders who can show domicile in the State, such as G-4's, to obtain in-state status upon such a showing (the state universities in Virginia and Rutgers (the state university of New Jersey)).[3] Universities in other States are not

[3] The policies of these state universities are found in state statutes or in written policies of the University or, in the case of Virginia, in an opinion of the state attorney general's office. The relevant excerpts from these sources are included in Appendix A to this brief. In the case of the universities whose written in-state policies do not have a specific provision dealing with aliens, it is not entirely clear how they would treat a G-4 visaholder as a matter of unwritten practice. We were informed orally by officials of the State University of New York that in practice it excludes all nonimmigrant visaholders from in-state status. But it is not clear whether such an exclusion of a G-4 visaholder who could lawfully show domicile in New York would be appropriate under the University's written policy after the *Elkins* decision. In addition, we were informed orally that the general policy of the City University of New York is to require aliens to have an immigrant visa in order to obtain in-state status, but that nonimmigrant employees

likely to have many, if any, G-4 visaholders (and probably very few holders of the other nonimmigrant visas that allow domicile in the United States). Even so, we have found several state universities in such States which have policies that would appear to allow the holders of G-4 and similar visas that permit U.S. domicile to obtain in-state status if they can show that they are domiciled in the State. These include, for example, the University of Alabama, the state universities in Arizona, the state universities in Colorado, Indiana University, the University of Massachusetts, the state universities in North Carolina, the University of Rhode Island, and the state universities in South Carolina.[4]

Thus, the *amici* have grossly overstated the impact of this case on state universities and colleges, even in the *amici* States themselves. Their assertions that the decisions below strike at the very rationale of the in-state/out-of-state distinction and may force public universities to charge the same tuition rate to all are patently absurd in view of the limited arguments made and accepted by the courts in this case. The courts below sensibly and narrowly focused on the University of Maryland's policy of excluding G-4 visaholders from in-state status *even when they are domiciled in Maryland*, while granting such status to citizens and immigrant visaholders domiciled in Maryland; and they held that policy unconstitutional. An even-handed policy of basing in-state status on domicile, applicable to all, would cure the constitutional defect found in this case and would not have any substantial effect or impose any great cost on public universities.

2. *Errors of Amici Curiae Regarding the Merits of the Questions Presented.* In view of the limited nature

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of the United Nations (G-4 visaholders) can obtain a special form that will allow them to obtain in-state status at that university.

[4] The relevant excerpts from the state statutes or the universities' policies governing in-state status at these universities are included in Appendix B to this brief.

of the holdings below, the true interest of the *amici* does not appear to be with the University of Maryland's policy at issue here, but with broader matters. They want this Court, first, to use this case as a vehicle to overrule *Vlandis* v. *Kline*, 412 U.S. 441 (1973), and, second, to hold that the strict-scrutiny standard of equal protection analysis does not apply to discrimination by the States against nonimmigrant aliens. On the merits of these questions, however, the *amici*, like the University of Maryland, have presented no good reason for this Court to grant a writ of certiorari in the present case.

(a) *The due process issue.* The *amici* devote considerable efforts in their briefs to attempting to resurrect, as an important issue in this case, the question of the continued viability of *Vlandis*. They assert that the lower courts' application of *Vlandis* to the University's policy prior to June 23, 1978, erroneously made the outcome dependent on the rationale advanced for the policy, and that this case provides a good vehicle for this Court to overrule *Vlandis*. Br. of Ala. *et al.* at 6-8; Br. of Am. Coun. on Educ. *et al.* at 4-5. These contentions are without merit.

Throughout this litigation, until the Clarifying Resolution of June 23, 1978, the University consistently represented that its In-State Policy was based on the Maryland law of domicile and that the reason it denied in-state status to all nonimmigrant aliens was that, in its view, they could not be domiciled in Maryland under state law. While the University asserted cost equalization as an interest served by the policy, it did not claim that that concern was the basis or test for determining in-state status under the policy, and indeed made clear that it was not. See *Elkins* v. *Moreno*, *supra*, 435 U.S. at 656-57 n.5 (App. 112a-113a n.5). Rather, the University repeatedly made plain that the basis of the policy—*i.e.*, the intended test for in-state status under the policy—was domicile under Maryland law. See *id.*, 435 U.S. at 658-60 (App. 114a-116a). Thus, it is not sur-

prising that the plaintiffs argued, and the courts held, that that policy created an irrebuttable presumption of domicile that was not universally true for G-4 visaholders and thus denied them due process of law under *Vlandis*. In *Elkins*, this Court confirmed that "this case is squarely within *Vlandis* as limited by [*Weinberger* v.] *Salfi* [422 U.S. 749, 771 (1975)] to those situations in which a State 'purport[s] to be concerned with [domicile, but] at the same time den[ies] to one seeking to meet its test of [domicile] the opportunity to show factors clearly bearing on that issue.'" 435 U.S. at 660 (App. 116a). As shown in our brief in opposition (at 23-24), this Court's decision in *Toll* v. *Moreno*, 441 U.S. 458 (1979), did not decide to the contrary; and on remand the lower courts reaffirmed the applicability of *Vlandis* to the University's policy prior to the Clarifying Resolution. In our view, that application of *Vlandis*, as limited in accordance with this Court's statement in *Elkins*, was appropriate and led to a proper result.

In any event, the *Vlandis* issue is no longer an important issue in this case. The University's policy was held invalid on equal protection and Supremacy Clause grounds for the entire period both before and after the Clarifying Resolution, and the due process holding simply provided an alternative ground limited to the two-year period from July 13, 1976, to June 23, 1978. In these circumstances, there is not the least reason for this Court to reconsider the due process issue, which relates only to the pre-1978 phase of this case.

(b) *The equal protection issue.* The *amici* have similarly presented no good reason for this Court to review the unanimous holding of the courts below on the equal protection issue. They claim that this Court should not let stand a decision applying strict scrutiny to a subclass of nonimmigrant aliens, even though they may be domiciled in the State. The reason given is that nonimmigrants do not contribute much to the State's income tax revenues. Br. of Ala. *et al.* at 9-10; Br. of Am. Coun.

on Educ. *et al.* at 5. This argument, too, is exaggerated and without merit.

As noted above, this case does not involve nonimmigrant aliens generally, but only those G-4 and similar visa-holders domiciled in the United States and in Maryland. They are the only ones harmed by the University's policy at issue here. It is true that G-4 visaholders are, by virtue of international agreements and federal statute, exempt from paying income taxes on their salaries from the international organizations employing them.[5] But they are subject to all other taxes, including federal, state, and local income taxes on any other income.[6]

In any event, the fact that G-4 aliens are exempt from income taxes on their salaries from the international organizations is no reason either to lower the equal protection standard applicable to them or to justify the University's discrimination against them under a strict-scrutiny standard. Nonpayment of certain taxes—

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[5] As noted in our brief in opposition (at 14 n.4), this tax exemption was adopted for the benefit of the international organizations and their member nations and cannot be waived by individual employees.

[6] The *amici* claim that all nonimmigrants are exempt from income tax on their worldwide income, citing 26 U.S.C. § 872. Br. of Ala. *et al.* at 9; Br. of Amer. Coun. on Educ. *et al.* at 5. That statement is flatly erroneous. Section 872 of the Code excludes non-U.S.-source income from the gross income of a "nonresident alien individual" for tax purposes. But a "nonresident alien individual" for such purposes is not equivalent to the holder of a nonimmigrant visa. Under Internal Revenue regulations defining "residence," a G-4 visaholder can be a resident alien for income tax purposes. 26 C.F.R. § 1.871-2. See *Escobar* v. *Commissioner*, 68 T.C. 304 (1977). See also Rev. Rul. 80-363, 1980-2 C.B. 249. In fact, it is clear that a G-4 visaholder who is domiciled in the United States and whose usual place of abode is in the United States is a resident for federal income tax purposes. Similarly, for state tax purposes, a G-4 visaholder who is domiciled in the State or otherwise resides in the State for the prescribed period is subject to state income tax except on his exempt salary. See, *e.g.*, Md. Ann. Code, Art. 81, § 279(i) (1980).

or, more precisely, an exemption from certain taxes, established by international agreement or federal statute and not waivable by the recipient—has never been a reason to apply a different standard of review for equal protection purposes. The reason that this Court has found classifications based on alienage to be suspect and subject to strict scrutiny is that aliens constitute a " 'discrete and insular' minority" for whom "heightened judicial solicitude is appropriate . . . ." *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971). This Court has further made clear that even a subclass of aliens is entitled to this protection so long as the enactment discriminating against them is directed at aliens and harms only aliens (as does the University's classification at issue here). *Nyquist* v. *Mauclet*, 432 U.S. 1, 9 (1977). This analysis is not limited to immigrant aliens. In fact, nonimmigrant aliens are at least as "discrete and insular" a minority in need of "heightened judicial solicitude" as are other aliens.[7] Thus, it is clear that the courts below properly applied strict scrutiny to judge the constitutional validity of the University's discrimination against G-4 visaholders.

Moreover, the G-4 visaholders' partial income tax exemption is insufficient to justify the University's discrimination against them under a strict-scrutiny standard. The University properly conceded below that its policy cannot withstand that exacting test (see App. 41a n.14) and apparently continues to do so since it makes no effort whatever in its petition to justify the policy under the strict-scrutiny standard.[8] Thus, that question is not presented here.

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[7] As noted in our brief in opposition (at 13), the references in *Graham* and *Nyquist* cited in the Brief of Alabama *et al.* (at 10) were made in the context of determining whether the enactments in question could survive strict scrutiny, not whether strict scrutiny applied.

[8] Under that standard, the State must show not only that its interest is substantial, but that the classification is precisely drawn

CONCLUSION

For these reasons and the reasons stated in our brief in opposition, the petition for writ of certiorari should be denied.

Respectfully submitted,

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and precisely tailored to serve that interest. *E.g., Sugarman* v. *Dougall*, 413 U.S. 634, 643 (1973); *Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972). The University's concession that its exclusion of G-4 and similar visaholders domiciled in Maryland from in-state status cannot meet that standard is clearly correct. It makes no effort to classify citizens and immigrant aliens domiciled in Maryland on the basis of their tax liability or payments. It allows such a citizen or immigrant domiciled in the State to obtain in-state status regardless of whether—and the extent to which—he pays state income taxes and regardless of whether he has contributed little, if anything, to the State's income tax revenues. The University further admitted below that an *immigrant* visaholder employed by a public international organization could obtain in-state status upon a showing of Maryland domicile even though his salary would likewise be exempt from state income tax. See *Elkins* v. *Moreno*, *supra*, 435 U.S. at 656-57 n.5 (App. 112a-113a n.5). Thus, the University's classification at issue here is not drawn with sufficient precision, in terms of the University's interest in cost equalization based on tax payments, to withstand the test of strict scrutiny.

APPENDICES

APPENDIX A

RELEVANT EXCERPTS FROM STATE STATUTES OR UNIVERSITIES' POLICIES GOVERNING RESIDENCY STATUS FOR TUITION PURPOSES AT STATE UNIVERSITIES IN CONNECTICUT, NEW JERSEY, NEW YORK, AND VIRGINIA

Connecticut

Conn. Gen. Stat. Ann. §§ 10-329d, 10-329e (West 1977):

"§ 10-329d. Definitions

* * * *

"(3) 'Domicile' denotes a person's true, fixed and permanent home and place of habitation. It is the place where he intends to remain, and to which he expects to return when he leaves without intending to establish a new domicile elsewhere . . . ."

"§ 10-329e. Determination of student status

"The following shall determine the status of a student:

"(1) Every person having his domicile in this state shall be entitled to classification as an in-state student for tuition purposes. Except as otherwise provided in this part, no person having his domicile outside of this state shall be eligible for classification as an in-state student for tuition purposes;

"(2) The domicile of an unemancipated person is that of his parent;

"(3) Upon moving to this state, an emancipated person employed full-time who provides evidence of domicile may apply for in-state classification for his spouse and unemancipated children after six consecutive months of residency . . . ."

[This statute contains no provision specifically restricting or dealing with aliens.]

New Jersey

Excerpt from Legal Residency Policy for Rutgers University, II. Factors Considered in Determining Residence for Tuition Assessment:

"D. *FOREIGN NATIONALS:*

"Alien nationals who are in the United States with resident immigrant visas or special refugee visas (being processed for permanent residency) will be considered the same as United States citizens for purposes of assessing tuition.

"However, any other non-immigrant alien will be classified as a non-resident for assessment of tuition *unless he/she demonstrates by affirmative proof that he/she has a domicile in New Jersey.*" (Emphasis added.)

New York

Excerpt from Administrative Policies, State University of New York, Establishment of Residence for Tuition Purposes, Item 010.1:

"1. *Resident Student Tuition*

"a. Payment of resident tuition depends upon the establishment of the 'domicile' of the student in New York State at the time of registration.

"One's domicile is that place where he maintains his permanent home and to which he always intends to return. Consequently, while a student may have any number of residences, he may have only one domicile."

[Other provisions follow, but none deals specifically with aliens.]

Virginia

Va. Code § 23-7 (1980) ("Who entitled to reduced tuition charges"):

* * * *

"B. Except as provided in § 23-7.2 [which is not relevant here], no person in attendance at a State institution of higher education shall be entitled to reduced tuition charges unless such person is and has been domiciled in Virginia for a period of at least one year immediately prior to the commencement of the term, semester or quarter for which any such reduced tuition charge is sought."

[Sec. 23-7 contains various other provisions, but none deals specifically with aliens.]

Excerpt from Memorandum from Paul J. Forch, Assistant Attorney General, to Presidents of State Institutions of Higher Education, December 16, 1980:

"In 1977, this Office published specific guidelines to assist institutions in the application of the domicile and durational requirement provided in § 23-7. In the case of aliens, the present guidelines provide as follows:

"*ALIENS*

"The fact that a person is not a citizen of the United States does not itself disqualify a person for in-state tuition. However, an alien must prove that he is domiciled in Virginia. Thus, he must satisfy the college that his ties are to Virginia as opposed to other states. If the student is in the United States on a temporary visa, which expires at some point in the future, he cannot be domiciled here, since he cannot have the intention to remain indefinitely. These types of visas, which expire at some point certain, are F, H, J and K visas. Applicants with these types of visas may be denied in-state tuition.

"Under existing guidelines, permanent resident immigrants are generally eligible for in-state tuition rates upon a showing of compliance with § 23-7.

Nonimmigrant aliens are also eligible if their visa does not require maintenance of a foreign residence which they may not abandon, or does not expire at some point certain. For example, A-1, A-2 and G-4 visaholders live in the United States indefinitely. . . ." (Emphasis added.)

APPENDIX B

RELEVANT EXCERPTS FROM STATE STATUTES OR UNIVERSITIES' POLICIES GOVERNING RESIDENCY STATUS FOR TUITION PURPOSES AT CERTAIN OTHER STATE UNIVERSITIES

Alabama

Excerpt from Resolution of The Board of Trustees of the University of Alabama, August 21, 1975:

> "A. . . . Classification of students as resident or non-resident will be determined by the following definitions and rules:
>
> * * * *
>
> "2. '*Residence*': For the purpose of this policy, a residence shall be that location with which a person is considered to have the most settled and permanent connection so that one would not have more than one residence. A residence is the place where a person is generally understood to reside and where that person does in fact reside with the intention of remaining there indefinitely and, during absences, of returning there. To initially establish a residence requires both an intent to remain at a place indefinitely within the meanings set out above and physical presence at that place. For purposes of this policy, *residence is generally intended to mean the same as domicile*, except where legal construction of that term conflicts with clear expressions to the contrary in this policy or the guidelines provided for herein." (Emphasis added.)

[The Resolution contains no provision dealing specifically with aliens.]

Excerpt from Memorandum to All International Students from Reva Bailey, Office of Admissions and Records, The University of Alabama in Huntsville, July 20, 1981:

"In most cases, determination of a student's residence status will be made based on information supplied to the University in the process of admission. International students who are in this country on a F-1 visa should be advised that under that classification it is not possible to qualify as an Alabama resident. Therefore, out-of-state fee rates will apply beginning this fall. *An international student whose visa is other than F-1* or who has been classified as a U.S. resident *should contact this office to request a review of your status under Alabama residency requirements.*" (Emphasis added.)

Arizona

Excerpt from Information and Guidelines for Determining Tuition Status, Arizona Board of Regents (Sec. 3.A—Aliens):

"A. A person who is not a citizen of the United States must meet the same requirements for establishing a domicile in Arizona as is required of a citizen. In addition, a non-citizen of the United States, if required to hold a visa, must hold a type of visa which permits establishment of an Arizona domicile."

Colorado

Colo. Rev. Stat. § 23-7-102 (1973):

"23-7-102. Definitions. As used in this article, unless the context otherwise requires:

* * * *

"(2) 'Domicile' means a person's true, fixed, and permanent home and place of habitation. It is the place where he intends to remain and to which he expects to return when he leaves without intending to establish a new domicile elsewhere.

* * * *

"(5) 'In-state student' means a student who has been domiciled in Colorado for one year or more imme-

diately preceding registration at any institution of higher education in Colorado for any term or session for which domiciliary classification is claimed . . . ."

[Sec. 23-7-103 contains various presumptions and rules for determination of in-state status, but none deals specifically with aliens.]

Indiana

Excerpt from Indiana University Rules Determining Resident and Nonresident Student Status for Indiana University Fee Purposes:

"3. The foreign citizenship of a person shall not be a factor in determining resident student status if such person has legal capacity to remain permanently in the United States."

Massachusetts

Excerpt from Rules and Regulations Governing the Residency Status of Students for Tuition Purposes, University of Massachusetts, § 3.3(d)(2):

"(d) Unless evidence to the contrary appears, it shall be presumed by the approving authority of the University that:

* * * *

"(2) A person who is not a citizen of the United States must meet the same requirements for establishing residency in Massachusetts as are required of a citizen. In addition, a non-citizen of the United States, if required to hold a visa, must hold the type of visa which permits establishment of Massachusetts residency. . . ."

North Carolina

N.C. Gen. Stat. § 116-143.1 (1978):

"§ 116-143-1. Provisions for determining resident status for tuition purposes.—(a) As defined under this section:

"(1) A 'legal resident' or 'resident' is a person who qualifies as a domiciliary of North Carolina; a 'nonresident' is a person who does not qualify as a domiciliary of North Carolina.

"(2) A 'resident for tuition purposes' is a person who qualifies for the in-State tuition rate; a 'nonresident for tuition purposes' is a person who does not qualify for the in-State tuition rate.

* * * *

"(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. . . ."

[Various other provisions follow, but none deals specifically with aliens.]

Excerpt from Record of the University of North Carolina at Chapel Hill, June 1980, The Undergraduate Bulletin, 1980-81 Issue:

"Aliens. An alien holding a visa which will permit eventual permanent residence in the United States is subject to the same considerations with respect to determination of legal residence as a citizen. An alien abiding in the United States under a visa conditioned at least in part upon intent not to abandon a foreign domicile (B, F, H and J visas) cannot be classified as a resident. An alien holding a visa issued for a purpose which is so restricted as to be fundamentally incompatible with an assertion by the alien of bona fide intent to establish a legal residence (C and D visas) cannot be classified as a resident. . . ."

Rhode Island

Excerpt from Regulations Defining Resident and Non-Resident Students at the University of Rhode Island (Adopted by the Board of Regents for Education December 2, 1971, and revised May 22, 1980):

"1. For the purposes of determining a student's classification, the word 'residence' shall mean a student's domicile—the student's true, fixed and permanent home and place of habitation.

"2. A student who is a resident of the State of Rhode Island shall be classified as a 'Resident Student' and shall pay all general and other fees prescribed by the Board of Regents for Resident Students in public higher education.

"3. A student who is not a resident of the State of Rhode Island shall be classified as a 'Non-Resident Student' and shall pay all general and other fees prescribed by the Board of Regents for Non-Resident Students in public higher education."

[Various other provisions follow, but none deals specifically with aliens.]

South Carolina

S.C. Code §§ 59-112-10, 59-112-20 (1980 Cum. Supp):

"§ 59-112-10. Definitions

* * * *

"C. The word 'residence' or 'reside' shall mean continuous and permanent physical presence within this State, *provided*, that temporary absences for short periods of time shall not affect the establishment of a residence.

"D. The word 'domicile' shall mean a person's true, fixed, principal residence and place of habitation; it shall indicate the place where such person intends to

remain, and to which such person expects to return upon leaving without establishing a new domicile in another state. . . ."

* * * *

"§ 59-112-20. South Carolina domicile defined for purposes of rates and tuition fees.

"South Carolina domicile for tuition and fee purposes shall be established as follows in determinations of rates of tuitions and fees to be paid by students entering or attending State Institutions:

"A. Independent persons who reside in and have been domiciled in South Carolina for a period of no less than twelve months with an intention of making a permanent home therein, and their dependents, may be considered eligible for in-state rates.

"B. Independent persons who reside in and have been domiciled in South Carolina for fewer than twelve months but who have full-time employment in the State, and their dependents, may be considered eligible for in-state rates for as long as such independent person is employed on a full-time basis in the State.

* * * *

"D. The residence and domicile of a dependent minor shall be presumed to be that of the parent of such dependent minor."

[There are various other provisions of the state statute, but none deals specifically with aliens.]

Excerpt from letter to James Bieke of Shea & Gardner from Brenda S. Josey, Residency Officer, University of South Carolina, September 4, 1981:

"Pursuant to your request, I am sending a list of non-immigrant aliens which the University of South Carolina has determined are in a capacity to establish residency for purposes of paying in-state tuition.

"The attached list includes a list of the most common non-immigrant visas and under the status column it indicates whether the person is in a capacity to establish legal residency within an American state. If non-immigrant aliens are in a capacity to establish residency in the United States and they meet South Carolina statutory requirements for paying in-state tuition, they are permitted to pay the tuition and fees afforded to South Carolina residents.

Excerpt from attachment to above-cited letter:

"The following is a list of the categories of non-immigrant aliens and a statement of whether the statutes allow the parties to have the capacity to become in-state residents.

"CLASSIFICATION	DESCRIPTION	STATUS
*	* * *	
G-4	Officers and Employees of International Organizations (and their families)	Yes
*	* * *	

"